



J. MICHAEL LUZIER
SENIOR STAFF VICE PRESIDENT
REGULATORY AFFAIRS
Advocacy Group

June 14, 2002

BY FIRST CLASS AND ELECTRONIC MAIL

Ms. Evangeline Tsibris Cummings
Environmental Protection Agency
Office of Environmental Information
Mail Code 2842T
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attention: Docket ID OEI-10014
Email: quality.guidelines@epa.gov

Re: Comments on Environmental Protection Agency's Draft *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*

Dear Ms. Cummings:

On behalf of the more than 205,000 members of the National Association of Home Builders (NAHB), I am pleased to submit these comments on the Environmental Protection Agency's (EPA's) Draft *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* ("Information Quality Guidelines") that were Noticed in the *Federal Register* on Tuesday, April 30, 2002.

NAHB is a federation of more than 800 state and local home builder associations nationwide. Our members include individuals and firms engaged in land development, single and multifamily construction, multifamily ownership, building material trades, and commercial and industrial projects. Over 80 percent of our members are classified as "small businesses" and our members collectively employ over eight million people nationwide. EPA's Information Quality Guidelines will have broad application to the residential construction industry, especially the dissemination of information concerning environmental, health, and safety risks, regulatory requirements, permitting, compliance, and rulemaking activities. The information dissemination activities of EPA's broad programs and activities clearly fall within the scope of the Information Quality Guidelines.

NAHB is keenly interested in the Office of Management & Budget's (OMB's) and EPA's Information Quality Guidelines, as well as federal information quality practices in general. We believe information quality is extremely important and hope that federal agencies will embrace information and data quality as a critical component of their agency mission. We are encouraged by the preliminary steps that OMB and EPA have taken in issuing their initial guidelines, and we hope this will lead to an ongoing process to improve information and data quality and to fundamentally improve the quality of information upon which substantive governmental decisions are made.

In response to EPA's request for public comments and input on its Draft Information Quality Guidelines, NAHB is pleased to offer the following comments. We will first provide general comments on EPA's Draft Guidelines in chronological order by Section number, and then address each of the specific questions posed by EPA.

General Comments

BACKGROUND AND DISCUSSION

1. **Sec. 1. OMB Guidelines.** EPA should clearly state that the "Information Quality Law" (Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658)) and the OMB and EPA Information Quality Guidelines are being promulgated under, and are intended to implement, the "information dissemination requirements" of Section 3504(d)(1) of the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3504(d)(1), 3516, as provided in the statute.
2. **Sec. 2.2 Information Management in EPA.** EPA's Information Quality Guidelines should clearly state that information quality is to be viewed by EPA as a "performance goal," as articulated in OMB's Information Quality Guidelines. 67 *Federal Register* 8458. Information quality should go beyond formalized implementation of OMB mandates, and be viewed as a critical component of agency mission. We believe a clear endorsement of information quality from the very top of each federal agency and department is essential to the successful transformation of agencies' information practices and to ensuring the quality of information used and disseminated by the federal government.
3. **Sec. 2.2 Information Management in EPA.** EPA states that "the primary responsibility for establishing appropriate standards for data quality ... resides within EPA's Program and Regional offices." We are concerned that statements like this are intended to needlessly undermine the significance of the new Information Quality Act and OMB's Information Quality Guidelines and minimize the overall responsibilities EPA is required to undertake with respect to information quality. We believe the new Congressional and OMB mandates require EPA to establish and ensure agency-wide data and information quality standards through their centralized information resource management programs.
4. **Sec. 3. Existing Policies and Procedure.** EPA discusses four existing programs that it currently has in place in order to demonstrate its ongoing data and information quality

activities. These programs include the EPA Agency-wide Quality System, EPA's Peer Review System, the Agency's Action Development Process, and the Agency's Integrated Error Correction Process. However, it is not enough to simply re-state what the agency is already doing. The new Information Quality Act and OMB's Information Quality Guidelines clearly impose new requirements on the Agency with respect to the quality of information it uses and disseminates to the public. It is obvious that what EPA and other agencies are currently doing is not adequate; that is why Congress has imposed new and additional mandates on them. The new Information Quality Act and OMB's Information Quality Guidelines require EPA to establish new, stand-alone policies and procedures to apply to the quality, objectivity, utility, and integrity of information EPA disseminates to the public. The Agency guidelines must also include administrative mechanisms that allow affected members of the public to seek and obtain the correction of information that does not meet the new OMB or agency standards. If EPA wants to integrate existing programs and procedures into the new requirements, it may. But it is not enough to discuss what the agency is currently doing and declare that to be satisfactory. EPA must prepare the new guidelines and state with specificity what is required by the guidelines and what the Agency must do to implement them.

5. **Sec. 4.2 Influential Information and Reproducibility.** Please refer to Comment 10, below, for a discussion of this topic.
6. **Sec. 4.3 Risk Analysis.** EPA states that it has decided to "adapt" the risk assessment standards of the Safe Drinking Water Act of 1996 (SDWA), but then provides no details of what its "adapted" standard is or how it is to be applied. These adapted standards for "risk assessments" should be developed and submitted for public review and comments as part of the Agency's Draft Information Quality Guidelines. Please refer to Comment 12, below, for additional discussion of this topic.

DRAFT GUIDELINES

Overview, Scope, and Applicability

7. **Sec. 1.1 What is the purpose of these guidelines?** NAHB strongly disagrees with the statements in this section that the draft guidelines are "not legally enforceable and do not create any rights or impose any legally binding requirements or obligations on the EPA ..." and that "[t]he guidelines may not apply to a particular situation based on the circumstances, and EPA retains discretion to adopt approaches on a case by case basis that differ from the guidelines, where appropriate." The Information Quality Law and OMB's Information Quality Guidelines contains no such exclusions, nor do they authorize EPA to enforce the new requirements on a discretionary basis. As indicated in Comment 3, above, we are concerned that statements like these are intended to needlessly undermine the significance of the new Information Quality Act and OMB's Information Quality Guidelines and minimize the overall responsibilities EPA is required to undertake with respect to information quality. We believe that the explicit intent of the Information Quality Law and OMB's Information Quality Guidelines are to vest the public with the right to "seek and obtain correction of information maintained and disseminated by the

agency that does not comply with ... OMB's guidelines." 67 *Federal Register* 8458. In addition, we believe the Information Quality Law is intended to empower the public to police agency information practices and not simply to assist agencies in their administrative tasks. There has clearly been a problem with agency information dissemination practices, and Congress has sought to empower the public by mandating additional transparency, quality, and correction mechanisms enforceable by the public. The EPA Information Quality Guidelines should take the lead and emphasize these points, especially to EPA's Program and Regional offices, where so many significant information activities are conducted.

8. **Sec. 1.3 What is not covered by these guidelines?** EPA appears to be attempting to dramatically limit the scope and coverage of the new Information Quality Law and OMB's Information Quality Guidelines through the use of broad and encompassing exemptions. These exemptions include distributions of information limited to government employees and EPA contractors and grantees, intra- or inter use or sharing of government information, correspondence with any individuals or persons, information in press releases and similar announcements, and information in public filings. We are most concerned with the exemptions for things like "correspondence with any individuals or persons" and "information in press releases and similar announcements," which, if disseminated to the public, could have widespread and lasting impacts on public perceptions and choices. For example, information disseminated by EPA and other federal agencies can literally change the behavior of consumers, businesses, and investors, leaving lasting impressions about the products they purchase, the risks they take, the decisions they make, and the companies they invest in. These broad, categorical exemptions are simply too broad to be consistent with the new Information Quality Guidelines and encompass information that should otherwise be included. Similarly, EPA's inclusion of a catch-all exemption for "other materials" it "may identify" is likewise overly broad and should be removed.

Ensuring and Maximizing Information Quality

9. **Sec. 3.1 How does EPA ensure and maximize the quality of disseminated information?** As indicated in Comment 4, above, the new Information Quality Act and OMB's Information Quality Guidelines clearly impose new requirements on the Agency with respect to the quality of information it uses and disseminates to the public. It is simply not enough for EPA to discuss what the Agency is currently doing under existing data and information quality programs and declare that to be satisfactory. If EPA wants to integrate existing programs and procedures into the new information quality requirements, it may. But EPA must prepare the new guidelines and state with specificity what is required by the guidelines and what the Agency must do to implement them.
10. **Sec. 3.2 How does the agency define influential information for these guidelines?** First, NAHB cautions EPA to avoid categorizing too much information in advance, because certain information might be viewed as "non influential" at the time it is being collected or developed, but may later turn out to be "influential" (or sought to be used as such). In that situation, the information might be problematic (or even un-useable)

because it was not developed with the adequate standards for transparency and reproducibility required for “influential” information.

Second, with regard to the specific “classes” of information proposed by EPA in the draft guidelines, we offer the following comments:

- It is not clear what a “top” agency action is, how such an action is defined, or how the public will know whether a particular information activity is part of a “top” agency action. EPA should clearly define what it means by a “top” agency action and consider re-phrasing this item.
- We are concerned that using the “significant” regulatory action standard (\$100 million or greater impact) from Executive Order 12866, Regulatory Planning and Review, may confuse the public by suggesting that this threshold limits the type of information that is considered “influential.” Clearly, a great deal of information meets the OMB definition of “influential” that is not included in or associated with “significant” regulatory actions under the Executive order definition.
- The “case-by-case” category should not be misunderstood to suggest that EPA has discretion to designate the type of information that is deemed “influential.” “Influential” information is designated as such under the OMB Information Quality Guidelines because the “dissemination of the information will have or does have a clear and substantial impact on important public policy or important private sector impacts.” EPA has no authority to alter the OMB definition to exclude information that otherwise meets this definition.

11. Sec. 3.3 How does EPA ensure and maximize the quality of “influential”

information? First, it is not enough for EPA to simply state that they will apply “robustness checks” to “influential” information where confidentiality or proprietary concerns prevent adequate transparency as to data and methods to permit public “reproducibility” of the analytical results. EPA must state in the guidelines what these “robustness checks” will include so that the public can evaluate and comment on them. Second, as indicated in Comments 4 and 11, above, the new Information Quality Act and OMB’s Information Quality Guidelines clearly impose new requirements on the Agency with respect to the quality of information it uses and disseminates to the public. It is simply not enough for EPA to discuss what the Agency is currently doing under existing data and information quality programs and declare that to be satisfactory. EPA must prepare the new guidelines and state with specificity what is required by the guidelines and what the Agency must do to implement them. It cannot simply reference these other, ongoing programs.

12. Sec. 3.4 How does EPA ensure and maximize the quality of “influential” scientific risk assessment information? First, EPA appears to be attempting to limit the application of the Safe Drinking Water Act’s (SDWA’s) risk assessment provisions to “influential” human risk assessments only. However, it does not appear the OMB’s Information Quality Guidelines contain any such limitation to “influential” risk assessments, nor do they authorize EPA to so restrict it. Second, EPA appears to be attempting to include other restrictive provisions, such as the availability of risk information and the resources available to the Agency, to the applicability of the SDWA

standards. These restrictions likewise have no foundation in the OMB guidelines and should be removed. Finally, EPA has not “adopted or adapted” the SDWA’s risk assessment provisions for environmental and safety risk analyses as required by the OMB Information Quality Guidelines. These standards should be developed and submitted for public review and comments as part of the development of the Agency’s Draft Information Quality Guidelines.

Pre-Dissemination Review

13. Sec. 4.1 What are the administrative mechanisms for pre-dissemination reviews?

As discussed in Comments 4 and 11, above, with respect to EPA simply referencing existing data and information quality programs and declaring them to be satisfactory, EPA has likewise simply referenced their existing “pre-dissemination” review programs and declared them to be satisfactory. However, this is clearly not enough to satisfy the OMB standards. The agency is required by both the new Information Quality Act and OMB’s Information Quality Guidelines to include “pre-dissemination” review provisions for all information disseminated by the Agency in the new Information Quality Guidelines and not simply reference existing programs.

Correction of Information.

14. Sec. 5.1 What are EPA’s Administrative Mechanisms for Affected Persons to Seek and Obtain Appropriate Correction of Information?

We recommend that EPA adopt a “centralized” process for handling complaints under the guidelines, where complaints can be submitted to a designated Agency official who will forward the initial complaint to the program office that was responsible for the dissemination of the contested information. That program office can then respond back through that designated official. Further, we recommend that formalized appeals should be made to EPA’s Chief Information Officer (CIO), and that EPA should strongly consider the establishment of a formal, independent board to review and act on appeals in an “Ombudsman” capacity.

15. Sec. 5.2 Who may request correction of information from the Agency?

We believe EPA’s definition of “affected person” is too narrow. We recommend that EPA expand the definition to include “users” of information as well as those who benefit from or are harmed by it. In addition, EPA should include trade associations and other groups who represent such persons within the definition of an “affected person.”

16. Sec. 5.4 Will EPA consider all requests for correction of information?

NAHB strongly disagrees with EPA’s purported exclusion from the “administrative correction mechanism” all information “where a mechanism by which to submit comments to the Agency is already provided,” including “rulemakings.” The practical effect of this proposed provision could be to eviscerate the benefits of the Information Quality Law and OMB’s Information Quality Guidelines to the public. The Information Quality Law and OMB’s Information Quality Guidelines contain no such exclusion for rulemaking, nor do they authorize EPA create one. We believe that the explicit intent of the Information Quality Law and OMB’s Information Quality Guidelines are to vest the

public with the right to “seek and obtain correction of information maintained and disseminated by the agency that does not comply with ... OMB’s guidelines.” This should specifically include information contained in “rulemakings” and dockets. By excluding rulemakings, EPA could shield huge amounts of highly important information from coverage under the guidelines by simply declaring that it is part of some “future” rulemaking. These rulemaking procedures often take years to complete and it is precisely in these circumstance where the public can be most effective in identifying problematic information well in advance - before the agency embarks on a long and expensive path, only to have data and information quality concerns that could have been corrected early on arise late in the process. EPA should avoid this pitfall and endorse information quality as a critical component of its agency mission and expand, not attempt to restrict, the coverage of these new information quality standards. In addition, EPA has often failed to provide public access to studies and other documents that are referenced in rulemakings and serve as the substantive basis for policy choices. By eliminating the public’s ability to seek and obtain the correction of this information simply because it was part of a rulemaking would completely undermine the public’s ability to police agency information practices, as intended by the new Information Quality Law.

Finally, there are many classes of information, such as guidance and criteria documents, that are widely disseminated and subject to notice and comment, but that either never get corrected by the Agency (as requested in public comments) or that literally take years to correct. These documents frequently include highly “influential” information and often serve as the substantive basis for policy decisions the Agency makes. It will completely undermine the purpose and effectiveness of the new Information Quality Law and OMB’s Information Quality Guidelines to preclude requests for the correction of this type information on the basis that it has gone through some public comment process.

We strongly urge EPA to eliminate this highly problematic and overly broad provision.

- 17. Sec. 5.5. How will EPA respond to a request for correction of information?** EPA states that it “may elect not to correct some completed information products on a case-by-case basis due to Agency priorities, time constraints, or resources.” However, none of these exceptions are provided for in the OMB Information Quality Guidelines, which refer only to the nature, importance, and timeliness of the information. EPA’s stance also seems to directly violate the statutory requirements that the agency establish administrative mechanisms that allow affected persons to “seek and obtain” the correction of information that does not meet the OMB guidelines. Presumably, EPA should correct all errors, but it may be reasonable to make limited exceptions based on the nature, importance, and timeliness of the information, as contemplated by OMB. Regardless, if errors are going to remain uncorrected, EPA should, at a minimum, employ certain disclosures and caveats in order to identify and label the error.

Comments on EPA’s Specific Questions

- **Influential Information.** As indicated in Comment 10, above, we caution EPA to avoid categorizing too much information in advance, because certain information might be

viewed as “non influential” at the time it is being collected or developed, but may later turn out to be “influential” (or sought to be used as such). In that situation, the information might be problematic (or even un-useable) because it was not developed with the adequate standards for transparency and reproducibility required for “influential” information.

With regard to the specific “classes” of information proposed by EPA in the draft guidelines, EPA should clearly define what it means by a “top” agency action (or rephrase this item), clarify that information need not be part of a “significant” regulatory action in order to be deemed “influential,” should limit any “case-by-case” exceptions, and define “influential” less in terms of categories of information and more on whether the information “will have or does have a clear and substantial impact on important public policy or important private sector impacts,” as required by OMB.

- **Reproducibility.** EPA’s discussion of “influential” information and “reproducibility” closely follow, for the most part, the language in OMB’s Information Quality Guidelines. However, there are a couple of areas that appear to be problematic. First, as indicated in Comment 11, above, it is not enough for EPA to simply state that they will apply “robustness checks” to “influential” information where confidentiality or proprietary concerns prevent adequate transparency as to data and methods to permit public “reproducibility” of the analytical results. EPA must state in its guidelines what these “robustness checks” will include so that the public can evaluate and comment on them. Second, EPA states that it “plans to draw heavily on existing quality assurance and peer review procedures” in order to implement its transparency and reproducibility requirements for “influential” information. However, as we discussed in Comment 4, above, the reason Congress passed the new Information Quality Act and required OMB to establish government-wide standards for information quality is that what EPA and other agencies are currently doing is not adequate. EPA should recognize this and clearly adopt information quality as a “performance goal” and critical component of agency mission. Finally, if EPA intends to simply integrate existing “reproducibility” programs into the new requirements, it must specifically include those requirements in the new guidelines and not simply attempt to loosely incorporate them by reference. EPA should state with specificity what is required by the guidelines and what the Agency must do to implement them.
- **Influential Risk Assessment.** As indicated in Comment 12, above, EPA appears to be attempting to limit the application of the Safe Drinking Water Act’s (SDWA’s) risk assessment provisions to “influential” human risk assessments only. However, it does not appear the OMB’s Information Quality Guidelines contain any such limitation to “influential” risk assessments, nor do they authorize EPA to so restrict it. Second, EPA has include other restrictive provisions, such as the availability of risk information and the resources available to the Agency, that likewise have no foundation in the OMB guidelines and should be removed. Third, EPA has not “adopted or adapted” the SDWA’s risk assessment provisions for environmental and safety risk analyses as required by the OMB Information Quality Guidelines. Finally, we believe that EPA should go beyond formalized implementation of OMB mandates and expand the

categories of information subject to heightened quality standards. EPA should send a clear signal that it is dedicated to information quality and will commit to applying these higher standards to all information disseminated by the agency.

- **Sources of Information Disseminated by EPA.** EPA should ensure that information being developed by both internally and by external sources, such as contractors and grantees, meets the highest levels of quality for which it might ever be used and disseminated. NAHB cautions EPA to avoid categorizing too much information in advance, because certain information might be viewed as “non influential” at the time it is being collected or developed, but may later turn out to be “influential” (or sought to be used as such). In that situation, the information might be problematic (or even un-useable) because it was not developed with the adequate standards for transparency and reproducibility required for “influential” information. For this reason, EPA should go beyond formalized implementation of OMB mandates and expand the categories of information subject to heightened quality standards.
- **Complaint Resolution.** As indicated in Comment 14, above, we recommend that EPA adopt a “centralized” process for handling complaints under the guidelines, where complaints can be submitted to a designated Agency official who will forward the initial complaint to the program office that was responsible for the dissemination of the contested information. That program office can then respond back through that designated official. Further, we recommend that formalized appeals should be made to EPA’s Chief Information Officer (CIO), and that EPA should strongly consider the establishment of a formal, independent board to review and act on appeals in an “Ombudsman” capacity.

Thank you for the opportunity to comment on EPA’s Draft Information Quality Guidelines. We commend EPA for their efforts in publishing these Draft Information Quality Guidelines within the tight schedule established by Congress and OMB. Please feel free to call either me at (202) 266-8335 or our Regulatory Counsel, Bruce Lundegren, at (202) 266-8305 if you have any questions or require additional information.

Sincerely,

/signed/

J. Michael Luzier
Senior Staff Vice President for
Regulatory Affairs

JML/bel